Real Estate Developer's General Liability Options

Real Estate Developers (Developer) many times hire a General Contractor (GC) to build their project and believe they have transferred their liability to the GC. Actually, the developer is the ultimate GC. Just as the GC should hire subcontractors (subs) with liability, commercial auto and workers' compensation insurance and be listed as an additional insured to make subs coverage the first line of defense. The GC is expected to have the same casualty coverages in place and name the developer as an additional insured.

The concern is what happens when the developer gets sued and the GC and the subs do not? As an additional insured you are provided vicarious liability, but not primary liability, meaning if you as the developer are the only one sued, you have no coverage. Or if there is a situation where the GC is not negligent, someone slips and falls in a non-construction area. There are three levels of protection you can obtain to mitigate your exposure: Premises only liability, Owner's Interest (premises and products, with completed operations) and Wrap Up Insurance (Developer controlled coverage).

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1. **Premises Liability** – Typically a GC’s coverage will provide coverage for “construction activities”, therefore a developer is still exposed for the areas that are not included in the construction activities, which could include vacant land around the project. If a pedestrian comes on site and is injured in a slip and fall incident that is not part of the construction area, it is very likely the GC’s policy would not respond. Having a policy for premises liability in the developer’s name would provide this protection. This coverage is relatively limited and inexpensive.

2. **Owner’s Interest Liability** – This is coverage for a developer that provides both premises liability and products with completed operations coverage. This is essentially similar coverage that the GC would have for themselves providing coverage for premises and construction activities. The policy can be written with an extended period for when a project is completed, that would extend through

2. (cont.) the statute of limitations (usually 10 years with a 2-year reporting period at the end). This is relevant because GC typically list the developer as an additional insured on their coverage for the term of the project, but the developer’s liability exposer extends until the statute of limitations expires. Therefore, if claims are filed after completion then there would be no products and completed operations coverage. The other challenge is finding the GC 7 or 8 years later when a claim is filed. Larger ones may be around, but others may have sold, merged or closed. Having an owners interest policy written through the statute of limitations would provide the developer with protection. The cost of this is less than what a GC would pay, but still considerably higher than a premise only policy.

3. **Wrap Up** – Previously, this type of policy was only for very large projects but this has changed in recent years. This is essentially an Owners Interest policy

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3. (cont.) that includes the GC and the Subcontractors insurance. The developer buys the liability for all involved on the project, then after you receive the bids from the GC and the subs, you have contract with them to exclude the insurance cost for the project. Many times, due to economies of scale, your costs are less, and the savings on the bids offsets most, if not all policy cost. It is possible to come out ahead on certain deals, depending on the size of the contractors, as smaller contractors have higher cost. The advantage of this option is that developer knows what the coverages and exclusions are, selects the limits, and does not have to be concerned with a GC or sub having a coverage lapse. You also purchase the time frame that includes the statute of limitations. There is some administration that is required, so you must organize this and understand that the process serves you well in the long term. The cost can be less in the end than purchasing an Owner’s Interest policy once you reduce the price of the bids for the project by eliminating the insurance cost.